



CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk
200 East Santa Clara Street
San José, California 95113
Telephone (408) 535-1260
FAX (408) 292-6207

City Clerk

STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)
CITY OF SAN JOSE)

I, Lee Price, City Clerk & Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that "**Ordinance No. 28731**", the original copy of which is attached hereto, was passed for publication of title on the **23rd day of March, 2010**, was published in accordance with the provisions of the Charter of the City of San Jose, and was given final reading and adopted on the **6th day of April, 2010**, by the following vote:

AYES: CHIRCO, CHU, CONSTANT, HERRERA, KALRA, LICCARDO,
NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: CAMPOS

DISQUALIFIED: NONE.

VACANT: NONE.

Said ordinance is effective as of **7th day of May, 2010**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this **7th day of April, 2010**.

(SEAL)

LEE PRICE, MMC
CITY CLERK & EX-OFFICIO
CLERK OF THE CITY COUNCIL

/rmk

ORDINANCE NO. 28731

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING VARIOUS SECTIONS OF CHAPTER 20.70 AND CHAPTER 20.100 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO ESTABLISH A NEW CONDITIONAL USE PERMIT PROCESS FOR LARGE DRINKING ESTABLISHMENTS THAT OPERATE AFTER MIDNIGHT AND HAVE A MAXIMUM OCCUPANCY LOAD OF MORE THAN 250 PERSONS WHEREUNDER THE CITY COUNCIL WOULD BE THE INITIAL DECISION-MAKING BODY

WHEREAS, on June 21, 2005 the City Council of the City of San Jose adopted Resolution No. 72767 in connection with that certain final Environmental Impact Report prepared for the San Jose Downtown Strategy 2000 Plan (the "EIR"), and the Director of Planning, Building and Code Enforcement has determined under Planning File No. PP10-049 that the environmental impacts resulting from the adoption of this proposed ordinance have been disclosed and analyzed under that final EIR, all in conformance with the provisions and requirements of the California Environmental Quality Act of 1970, together with state and local guidelines promulgated thereunder; and

WHEREAS, the City Council of the City of San Jose is the decision-making body for this proposed ordinance; and

WHEREAS, this Council of the City of San José has considered and approves the use of said EIR and Resolution No. 72767 in connection with the adoption of this proposed ordinance prior to taking any approval actions on this proposed ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 20.70.100 of Chapter 20.70 of Title 20 of the San Jose Municipal Code is hereby amended to read in its entirety as follows:

20.70.100 Allowed Uses and Permit Requirements

A. "Permitted" land uses are indicated by a "P" on Table 20-140.

- B. "Conditional" uses requiring Planning Commission approval as the initial decision-making body are indicated by a "C" on Table 20-140. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a conditional use permit approved by the Planning Commission, or City Council on appeal, as set forth in Chapter 20.100.
- C. "Conditional" uses requiring City Council approval as the initial decision-making body are indicated by a "CC" on Table 20-140. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a conditional use permit approved by the City Council as set forth in Chapter 20.100. Applications for these uses shall first be considered by the Planning Commission at a public hearing of the Commission for the Commission's report and recommendation on the application to the City Council pursuant to the processes set forth in Chapter 20.100.D. "Special" uses are indicated by a "S" on Table 20-140. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a special use permit as set forth in Chapter 20.100.
- E. "Administrative" uses are indicated by an "A" on Table 20-140. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with an administrative permit as set forth in Chapter 20.100.
- F. Land uses not permitted are indicated by a "-" on Table 20-140. Land uses not listed on Table 20-140 are not permitted.
- G. The column of Table 20-140, under the heading Additional Use Regulations for the DG Area, identifies further regulations on the uses of ground-floor building space within a portion of the DC Zoning District. The portion of the DC District included in the DG Area is described in Section 20.70.520. These regulations apply to ground-floor building space, defined as Downtown Ground-Floor Space ("DG Area"), in Section 20.70.520 of this Chapter. If there are no additional regulations on properties located in the DG Area noted in this column, the use regulations for the DG Area remain those regulations of the DC Zoning District.
- H. The "Parking" column of Table 20-140 establishes the required parking. The amount of parking may not be increased or decreased unless modified by the Director as set forth in Sections 20.70.320 and 20.70.330 of this Chapter.
- I. When the right column of Table 20-140 includes a reference to a section number or a footnote, the regulations cited in the section number or footnote apply to the use. In addition, all uses are subject to any other applicable provision of this Title 20 and any other title of the San José Municipal Code.

Table 20-140 Downtown Districts Land Use Regulations					
	Downtown Districts	Land Use Regulations			
Use	Zoning Districts	Applicable Notes & Sections			
	DC	DC-NT1	Additional Use Regulations for the DG Area	Parking	Applicable to All Downtown Districts
Offices and Financial Services					
Automatic Teller Machine	P	P		No parking	Section 20.80.200
Business Support	P	P	S, Note l	No parking	-
Financial institution	P	P	S, Note i	2.5 per 1,000 sq. ft.*	
Financial Services	P	P	S, Note n	No parking	
Offices, business and administrative	P	P	S, Note j	2.5 per 1,000 sq. ft.*	Section 20.70.110
Research and development	P	P	-	2.5 per 1,000 sq. ft.*	Note 1
General Retail					
Alcohol, off-site sales – beer and/or wine only	C	C		No parking	Section 20.80.900
Alcohol, off-site sales – full range of alcoholic beverages	C	C		No parking	Section 20.80.900
Auction	S	-	-	No parking	
Food, beverage, groceries	P	P		No parking	
Open air sales establishments and areas	S	S		No parking	
Outdoor vending	S	S		No parking	Part 10, Chapter 20.80
Pawn Shop, Pawn Broker	C	C	Note b	No parking	
Retail sales, goods and merchandise	P	P	Note a	No parking	
Seasonal sales	P	P		No parking	Part 14, Chapter 20.80
Education and Training					
Day care center	P	P	S, Note c	No parking	
Post-secondary School	P	P	-	1 per 360 sq. ft.	
Trade School	P	P	-	1 per 360 sq. ft.	

Table 20-140 Downtown Districts Land Use Regulations					
Personal enrichment, Instructional Art	P	P	Note d	1 per 360 sq. ft.	
School, elementary (grades K-8)	C	C	-	1 per teacher and employee	
High School (grades 9-12)	C	C	-	.75 per teacher and employee and 1 per each 10 students	
Entertainment and Recreation Related					
Amusement arcade	C	-	Note e	No parking	
Entertainment establishment	C	-		No parking	
Movie Theater	P	P		No parking	
Recreation Commercial/Indoor	P	P		No parking	
Poolroom	S	-		No parking	
Private club or lodge	P	P	-	1 per 360 sq. ft.	
Food Services					
Banquet facility	P	P	Note f	No parking required	
Caterer	P	P	C, Note f	No parking	
Drinking establishments	C	C		No parking	
Drinking establishments with an approved maximum occupancy load of over 250 persons and that operate between 12:00 midnight and 6:00 a.m.	CC	-			Note 7
Public eating establishments	P	P		No parking	
Wineries, Breweries	C	C		No parking	
Health and Veterinary Services					
Animal grooming	P	P	-	No parking	
Animal Boarding, indoor	P	P	-	No parking	
Emergency ambulance service	C	-	-	No parking	
Hospital/ in-patient medical facility	C	-	-	1.5 per doctor	
Medical or Dental Clinic/Out-patient facility	P	P	-	1.5 per doctor	
Veterinarian	P	P	-	1.5 per doctor	
General Services					
Bed and breakfast	P	P	S, Note m	.35 per room	Part 2, Chapter 20.80

Table 20-140 Downtown Districts Land Use Regulations					
Hotel/motel	P	P	Note m	.35 per room	
Maintenance and repair of household appliances	P	P	-	No parking	
Mortuary and funeral services	C	C	-	.75 per employee and vehicle	
Personal Services	P	P	Note g	No parking	-
Printing and Publishing	P	P	Note h	No parking	
Public, Quasi-Public and Assembly Uses					
Auditorium	C	-	-	No parking	
Cemetery	C	C	-	No parking	
Church/religious assembly	P	P		No parking	
Information Center	P	P		No parking	
Museums, libraries	P	-	P	No parking	
Parks, playgrounds, or community centers	P	P	Note k	No parking	
Residential					
Residential Shelter	C	-	-	1 per 4 beds, 2.5 per 1,000 sq.ft.*	
Live/work	P	S		1.5 per unit	Section 20.70.120
Residential multiple dwelling	P	P	-	1 per unit	
Residential Care Facility for 7 or more persons	C	C	-	.75 per employee	
Residential Services Facility for 7 or more persons	C	C	-	.75 per employee	
Single room occupancy living unit	S	S	-	.6 per room	Part 15, Chapter 20.80
Single room occupancy hotel	S	S	-	.6 per room	Part 15, Chapter 20.80
Residential Accessory Uses					
Accessory buildings and structures	P	P	-	No parking	Note 2
Reverse vending	S	S	-	No parking	Note 3
Small collection facility	S	S	-	No parking	Note 3
Transportation and Communication					
Community television antenna systems	C	-	-	No parking	
Off-site and alternating use parking arrangements	P	P	-	N/A	Section 20.90.200
Parking establishment, off-street	P	P	-	N/A	

Table 20-140 Downtown Districts Land Use Regulations					
Private Electrical Power Generation Facility	C	C	-	1 for each vehicle used in the operation of such facility	
Standby Generators that do not exceed noise or air standards	A	A	-	N/A	
Temporary Stand-by/Backup generators	P	P	-	N/A	
Short term parking lot for uses or events other than on-site	S	S		N/A	
Radio & Television Studios	S	-	C	No parking	
Wireless communication antenna	S	-	-	No parking	Section 20.80.1900
Wireless communication antenna, building mounted	P	-	-	No parking	Section 20.80.1900
Electric Power Generation					
Solar Photovoltaic System	P	P	-	No parking	Section 20.100.610(C) (7)
Vehicle Related Use					
Accessory installation for cars and passenger trucks	P	-	-	No parking	
Car wash, detailing	P	-	-	No parking	
Gas or charge station	P	-	-	No parking	Note 3
Gas or charge station with incidental service and repair	P	-	-	No parking	Note 3
Sale and lease, vehicles and equipment (less than one ton)	P	-	-	1.5 per employee	Note 4
Tires, batteries, accessories, lube, oil change, smog check station, air conditioning	P	-	-	2 per bay or .75 per employee	Note 5
Sale, vehicle parts, new	P	-	-	No parking required	

Notes:

Notes applicable to the DG Area only:

- (a) Excluding second-hand stores not dealing primarily in antiques, artworks, or vintage clothing.
- (b) Only as a use incidental to a retail jewelry store, otherwise, not permitted.
- (c) Only as a use incidental to existing on-site office use, otherwise not permitted.
- (d) Culinary/Art School with public classes and public demonstrations allowed, includes such areas as dance, music, martial arts, and fine arts.
- (e) Allowed only as an incidental use to other allowed recreation uses.
- (f) Only as a use incidental to restaurant, grocery or bakery uses for primarily on site sales, otherwise not permitted.
- (g) Excludes check-cashing services, photography studios, weight loss centers, interior decorating, and bail bond services.

- (h) Only if dedicated primarily to on-site retail customer copy services, otherwise not permitted.
- (i) Only if dedicated primarily to on-site retail customer services, otherwise not permitted.
- (j) Exception for travel agencies and real estate agencies which are the only permitted uses.
- (k) Community centers are not allowed.
- (l) Exception for copy shops and mail centers which are the only permitted uses.
- (m) Use of ground floor to be primarily dedicated to customer-related public services.
- (n) Includes financial retail services such as payroll advances, foreign currency exchange, debt card services and related financial services products but excludes check cashing except as an ancillary use.

Notes applicable to Downtown Core (DC) Zoning District including DG Area:

- (1) Excludes manufacturing uses.
- (2) No lot may be used solely for an accessory structure or building.
- (3) Incidental repair includes air conditioning service, carburetor & fuel injection service, electrical service, radiator service, and tune-up, lube, oil change, and smog check, as well as tires, batteries and accessories installation. Does not allow body repair or painting.
- (4) All activity must be conducted indoors.
- (5) Non-engine and exhaust related service and repair allowed as incidental use.
- (6) Limited to instrumental and vocal music and readings. Also, notwithstanding the provisions of Section 20.200.940(2), incidental instrumental and vocal music shall be allowed between the hours of 6:00 a.m. and 12:00 a.m.
- (7) Maximum occupancy load shall be that maximum occupancy load determined by the City Fire Marshall.

* Under the Parking Management Plan, October 2001, the Code may be changed to reduce the parking allotments for these uses. The reduction would be 2.5 spaces per 1,000 square feet when BART is opened.

Fifteen percent (15%) of total parking requirement must be provided off-site.

SECTION 2. Section 20.100.220 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.100.220 Appeal - Hearing Body

Decisions on permits or approvals pursuant to this Chapter are subject to appeal as set forth in Table 20-260 which lists the initial decision maker and the decision making body which will hear any appeal.

Table 20-260 Appeal Hearing Body		
Application	Initial Decision Making Body	Appeal Decision Making Body
Administrative Permit	Director of Planning	No Appeal
Site Development Permit	Director of Planning	Planning Commission

Site Development Permit – Projects within Downtown Districts and exceeding 150 feet and FAR of 6:1	Director of Planning	City Council
Single-Family House Permit Administrative Decision Director's Hearing	Director of Planning Director of Planning	No Appeal Planning Commission
Planned Development Permit	Director of Planning	Planning Commission
Special Use Permit	Director of Planning	Planning Commission
Conditional Use Permit	Planning Commission	City Council
Conditional Use Permit – Drinking Establishments with an approved maximum occupancy load of over 250 persons that operate between 12:00 midnight and 6:00 a.m.	City Council	No Appeal
Variance	Director of Planning	Planning Commission
Exception	Director of Planning	Planning Commission
Sidewalk Café Permit I	Director of Planning	City Council
Tree Removal Permit	Director of Planning	Planning Commission

SECTION 3. Section 20.100.330 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.100.330 Order to Show Cause

If the noncompliance is not abated, corrected, or rectified within the time specified by the Director in said notice, the Director may issue an Order to Show Cause why such Permit or approval shall not be revoked, suspended or modified. An Order to Show Cause shall be set for a public hearing before the Planning Commission, except that in the case of a Conditional Use Permit for which the City Council is the initial decision-making body, the Order to Show Cause shall be set for a public hearing before the City Council, all pursuant to Section 20.100.340.

SECTION 4. Section 20.100.340 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.100.340 Hearing on an Order to Show Cause

- A. At the time specified in the Order to Show Cause or at such later time to which the matter is continued, the Planning Commission, or City Council as appropriate, shall hold a hearing to determine if the Permit or approval shall be revoked.
- B. The procedures set forth in this Chapter 20.100 shall equally apply to a hearing on an Order to Show Cause except as hereinafter expressly set forth.

- C. The decision of the Planning Commission shall be final except for Conditional Use Permits and Single-family House Permits-City Council Decision. The decision of the City Council shall be final on permits for which the City Council is the initial decision-making body or the appellate body.
- D. The decision of the Planning Commission on an Order to Show Cause relating to a Conditional Use Permit may be appealed to the City Council by the owner or tenant of the subject property.

SECTION 5. Section 20.100.350 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.100.350 Revocation, Suspension, or Modification

After a hearing on an Order to Show Cause, the Planning Commission, or City Council as appropriate under the processes set forth in this Chapter, at its discretion may revoke, suspend, or modify any Permit or other approval upon finding that:

- 1. A violation of any condition of a Development Permit, Development Variance, Development Exception or other approval was not abated, corrected or rectified within the time specified on the notice of violation; or
- 2. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the Notice of Noncompliance; or
- 3. A use as presently conducted creates a nuisance.

SECTION 6. Section 20.100.700 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.100.700 Applicability

- A. The provisions of this Part apply to and govern the issuance of all Permits made subject to the provisions of this Part. All permits governed under this Part shall hereinafter be referred to as Conditional Use Permits, and shall be issued by the Planning Commission or by the City Council as described in this Chapter 20.100.
- B. Use Exception Permits, Legal Nonconforming Use Enlargement Permits, Permits for Parking Areas or Structures in Residence Districts, Development Permits in the T-M District, Quarry Permits, Cluster Permits and Low Density Cluster Permits issued under previously existing provisions of this Title shall be deemed to be Conditional Use Permits and shall be governed by this Part.

SECTION 7. Section 20.100.710 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.100.710 Action by Director

Upon finding an application for a Conditional Use Permit complete pursuant to this Chapter, the Director shall review the application and shall set a public hearing thereon before the Planning Commission or City Council, as appropriate pursuant to the provisions of this Chapter 20.100.

PASSED FOR PUBLICATION OF TITLE this 23rd day of March, 2010, by the following vote:

AYES: CHIRCO, CHU, CONSTANT, HERRERA, KALRA,
LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.


ABSENT: CAMPOS.

DISQUALIFIED: NONE.

ATTEST:



LEE PRICE, MMC
City Clerk



CHUCK REED
Mayor